

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 13 of the Rules to)
Privatize the Administration of)
Examinations for Commercial Radio) FO Docket 92-206
Operator Licenses and to Clarify)
Certain Rules)

To: The Commission

COMMENTS OF FREDERICK O. MAIA

Respectfully submitted,

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November 2, 1992

No. of Copies rec'd 0+9
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Executive Summary

Frederick O. Maia presently serves as an officially-appointed Volunteer-Examiner Coordinator (VEC) for the operator examinations given in the Amateur Radio Service. Mr. Maia supports the Commission's proposal to privatize the administration of examinations for commercial radio operator licenses. To implement this program, Mr. Maia recommends that the Commission follow the Amateur model, which has a proven record of success.

The number of examining entities should be limited only by the FCC's ability to maintain an adequate liaison with them. The examining entities should be selected based on their ability to adequately serve the entire country or at least a defined geographic region. For entities that would also engage in the preparation or distribution of test preparation materials, there should be a requirement for a persuasive showing that these materials would not be correlated to a particular examination. Examining entities should be able to recover their out-of-pocket costs and the \$35 now charged by the FCC as an examination fee should be established as a permissible limit for private examiners.

The rules as proposed by the FCC in this proceeding are not adequate to establish a private examination program for commercial licenses. But the model for such rules exists in Part 97 of the rules and it could be readily adapted to the commercial license examination program.

Frederick O. Maia, by his counsel, submits these comments in support of the Commission's proposal to privatize the administration of examinations for commercial radio operator licenses.

Mr. Maia is licensed by the Commission in the Amateur Radio Service, call sign W5YI. Like the commercial radio services, the Amateur Radio Service has its own system of five classes of operator's licenses. Mr. Maia holds the highest class of Amateur Radio operator's license, the Amateur Extra class. Mr. Maia has also been appointed by the Commission as an official Volunteer-Examiner Coordinator, the W5YI-VEC.

In a nutshell, Mr. Maia believes that the Commission should privatize the administration of examinations for commercial licenses, just as it did for Amateur operator licenses. Furthermore, the Commission should follow the Amateur model, which has a proven record of success.

Parallels to the Amateur Radio Service

The Commission notes in the Notice of Proposed Rule Making in this proceeding (the "Notice") that there are seven classes of commercial radio operator licenses and three endorsements for certain additional accomplishments.

In the Amateur Radio service there are five classes of operator licenses and one feature that amounts to an endorsement, to reflect the successful completion of a Morse telegraphy examination.

The Commission's rules for the various commercial radio services specify the particular class of operator's license that must be held by the operator of any given type of station. The Commission's rules for the Amateur Radio Service also specify the class of license that must be held by the operator in order for the station to be operated in particular bands and in particular modes.

In both the Amateur and the commercial services (with the exception of the Restricted Radiotelephone Operator Permit), applicants for any particular class of operator license must demonstrate their knowledge of applicable laws, regulations and principles of telecommunications. In some instances applicants also must demonstrate skills in Morse telegraphy.

To demonstrate the requisite knowledge or skills, the applicants for both Amateur and commercial operator's licenses are given an examination which covers various elements, apropos to the class of license being sought. If the applicant passes the examination and is otherwise

qualified, the application for an operator's license is granted.

Ten years ago, the Amateur Radio Service was facing the same problem as the commercial services face today, only worse. For the commercial operator licenses, the Commission cites an aggregate annual workload of some 9200 licenses, which is expected to increase with the introduction of the GMDSS Radio Operator's License. The Amateur Service, even 10 years ago, was faced with an annual workload of more than 60,000 new and renewed licenses.

Ten years ago, Amateur operator license examinations for all classes except Novice were administered by the Commission at its field offices. Diminishing Commission resources, however, had begun to have their effect on the program. By 1984, the frequency of examination sessions at each field office was reduced to just 4 per year. The question pools could not be revised quickly enough to stay current with changes in technology and regulations. The examinations themselves had been compromised and could not be revised often enough to protect the integrity of the program. The same problems are cited today in the Commission's Notice in this proceeding.

To fix these problems in the Amateur Radio Service, the Communications Act was amended to permit the Commission to accept the services of volunteers, who would prepare and administer Amateur radio operator examinations. (See, 47 U.S.C. §154(f)(4)(A) and (B).) Implementing this authority, the Commission amended Part 97 of its rules for the Amateur Radio Service to create what is now Subpart F - Qualifying Examination Systems. (See, §97.401 through §97.527 of the Commission's rules.)

The heart of the volunteer examination program in the Amateur Radio Service is the Volunteer-Examiner Coordinator (VEC). These are organizations which have entered into a Memorandum of Understanding with the Commission. The W5YI-VEC was the first to coordinate examinations and examiners on a nationwide basis. There are 17 other VECs who do more or less the same thing.

It is the VECs who recruit and accredit the volunteer examiners, update the examination question pools, handle the paperwork and maintain records. It is they who perform the administrative tasks associated with an examination program and who direct and coordinate the efforts of the volunteers who actually administer the examinations.

Today the VEC system is an unqualified success. In 1992, this all-volunteer program will administer over 200,000 examination elements to more than 125,000 applicants at some 10,000 test sessions. The questions are current. Fraud and abuse are rare. The program has easily handled increases in the number of applicants stemming from the popularity of the new, codeless Technician Class license and it is about to absorb the testing for Novice Class licenses.

The problems that confront the Commission today with regard to commercial operator licenses are exactly the same as those that confronted the Commission ten years ago with regard to Amateur operator licenses. The statutory solution to the problem that is now in place is exactly the same. The regulatory solution to implement the statute should also be the same.

The Commission has a successful implementation model already functioning in the marketplace. The Commission should seek to build on its success in the Amateur Radio Service by using the same mechanism for commercial licenses. It is a proven way to conserve government resources while at the same time increasing examination opportunities and improving the quality of the program. Just as hams have often led the way with new communications technologies, here

they have blazed the trail for efficient administration of qualifying examinations.

Issues

Based on the successful model for a qualifying examination program now in use in the Amateur Radio Service, Mr. Maia offers these comments on the specific issues raised by the Commission in the Notice.

Number of Examining Entities. There is no intrinsic reason why there cannot be several entities authorized to coordinate the activities of examination teams. There is no limit on the number of licenses that can be issued and no call signs are required, so there is no danger that the activities of one Commercial Radio Examination Coordinator (CREC) will impede the activities of another CREC.

The only practical limit on the number of CRECs is the ability of the Commission to deal with them. According to the Notice, the Commission now deals with 25 local field offices, which are roughly analogous to CRECs. In the Amateur context, the Commission deals with 18 VECs, essentially through one employee in the Licensing Division in Gettysburg, Pennsylvania.

No specific number of CRECs need be decided. Since the statute does not permit participants to be compensated, the number of CRECs is likely to be self-limiting. The Commission's Managing Director should have the discretion to decide how many CRECs to accept service from while balancing the burden on the Commission to deal with them.

Geographic Locations. For purposes of the qualifying examination program in the Amateur service, the country is divided into 13 geographic regions. (See, Part 97, Appendix 2, of the Commission's rules.) A prospective VEC must propose to serve at least one of these regions and demonstrate the capability to do so. (§97.521(b)). Some VECs serve one region and some VECs serve all regions.

This regional structure with nationwide capability has served to attract diverse participants and has introduced an element of competition to the program. The competition is not in the sense of profit, but rather in the sense of performance, since the Commission publishes error rates and speed of service of the various VECs.

Mr. Maia urges the Commission to adopt the regional concept. Ideally, the Commission should adopt the same regions as those designated for the Amateur service. Its suitability has already been proven. This would facilitate

the efforts of current VECs, like the W5YI-VEC, who might wish to apply to be CRECs. By not requiring adjustments on the part of organizations that are already doing the job in a different context, the Commission can be assured of swift implementation of the CREC program.

Selection of CRECs. A key to the selection of CRECs would be the capability of the prospective CREC to serve an entire region or regions. The criteria for determining "service to an entire region" would be determined by the marketplace demand for examination opportunities. A CREC who serves Region 7 (Arizona, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming) may be able to provide adequate service by holding examinations in each state twice a year. A CREC who serves Region 6 (California), may have to hold examinations in 6 cities every month in order to adequately serve the region.

A CREC's capability to carry out a qualifying examination program ultimately boils down to its network of examiners or examining teams. Under the statute, these people may not be compensated. Thus they may not be employees of trade associations, schools or testing facilities. In short, another key to the selection of CRECs would be the applicant's showing of available human resources.

Clearly, each CREC should have the capability to design and administer the examinations for all classes of commercial licenses, just as is now the case in the Amateur service. This too should be a criterion for selection as a CREC.

The W5YI-CREC would propose to use the services of Extra Class Amateur radio operators, organized into 3-person testing teams. These individuals have already proven their proficiency in high speed Morse telegraphy, electrical principles, antennas and feed lines, radio wave propagation and practical circuits. As existing licensees of the Commission, they have a demonstrated respect for the Commission's licensing authority and an aversion to fraud. They would be ideal candidates to prepare and administer examinations in diverse localities under the immediate supervision of the CREC and the ultimate guidance of the FCC.

Conflict of Interests. There is a natural overlapping of interests on the part of schools, trade associations, testing services and publishers who may wish to be involved in both the preparation and administration of operator examinations as well as the sale of examination preparation materials. In the Amateur service, rather than

disqualifying such organizations, the Commission takes advantage of this natural overlap.

In the Amateur service, all of the examination questions and answers are a matter of public record. The question pools contain approximately ten times the number of questions that may be asked in any test element. Each VEC uses the same questions, distractors and answers in their examinations. So the only confidential element of any examination is the knowledge of which questions are going to be on any particular examination.

As a practical matter, the only conflict for a VEC that prepares or distributes test preparation materials is between the VEC's obligation to the Commission to conduct proper examinations and its incentive to sell books. Thus the rules for the Amateur service permit such a VEC to make a showing that it has taken measures to prevent its preparation materials from being correlated to any particular examination.

Nine years ago, such showings often dealt with the separation of functions within the VEC organization, demonstrating that the booklet writers would be separate from the people who dealt with examinations. Today, there is even less of a threat, since examinations are often

created on computers in the field by means of test preparation software that selects the proper grouping of questions in random sequences.

Based on this experience, which has been successful for 9 years, the Commission should permit entities who may have an interest in serving their members, selling preparation services or selling test preparation materials, to be CRECs. There should be a requirement, however, for a persuasive showing on the part of such entities as to how they will avoid a conflict of interests.

FCC Supervision. The private, qualifying examination program cannot replace the Commission as the licensing authority. The role of the CRECs, then, is to prepare and conduct examinations, certify the results to the Commission, and forward the applications of successful applicants to the Commission for issuance of the operator's license. Under 47 U.S.C. §154(f)(5), the Commission can transfer this ministerial function to the private sector, but, under 47 U.S.C. §303(1), it cannot transfer the licensing responsibility. Accordingly, the Commission must maintain a liaison with the CRECs to assure that this delegated function is being properly performed.

As in the case of the Amateur service, there should be designated a contact person who can provide information and otherwise respond to the needs of the CRECs. The Commission should monitor the performance of the CRECs and take independent steps to verify the proper performance of the duties which they have undertaken. The Commission should sponsor an annual meeting of CRECs.

As regulations change or new license requirements develop, the Commission should assist the CRECs to develop the syllabi for the test elements. However, much of the actual work in developing and publishing the question pools can and should be done by the CRECs.

Expenses and Fees. Although the Commission has asked interested organizations to estimate the expenses and costs for their program, as a practical matter this is difficult to do. For instance, the costs of the Amateur program, which handles 125,000 applicants a year, may not extrapolate to the commercial program, which handles 10,000 applicants a year. Conversely, if the commercial program could simply be tacked on to the Amateur program, there may be significant economies of scale and minimal marginal increases in the costs already being incurred.

According to the Notice, the Commission now collects a fee of \$35 per test from applicants, which is based on the Commission's cost to conduct the testing program. Mr. Maia suggests that this amount be taken as the presumed cost for anyone who might undertake to provide this service.

While the statute does not permit the examiners to be compensated, it does permit the examiners to charge a fee, set by the Commission, to recover their costs. If \$35 were presumed to be the cost of preparing and administering an examination, then this amount should be set as the fee which could be collected from applicants to defray the out-of-pocket costs incurred by the CREC and the examination team. It should be up to the CREC and its examining teams to decide how the fee should be apportioned between them.

Given the costs of paper, postage, long-distance telephone charges, site rental and transportation, it is most unlikely that a profit could result from the \$35 charge. Nevertheless, if any profit did result, it would be de minimis. The \$35 might even function as a sort of "price cap" and promote efficiency on the part of CRECs.

Rule Amendments

The rules proposed by the Commission are inadequate to accomplish the implementation of a commercial radio operator qualifying examination system in the private sector. The proposed rules contemplate a role for "a Commission recognized testing entity," but the rules do not establish an examination system.

Rules stemming from each of the issues discussed above are absolutely vital for the creation of a Commercial Radio Examination System. Mr. Maia suggests that the pertinent rules for the Amateur Radio Service can be readily adapted for the commercial services. However, whether or not the Commission chooses to follow this model, new rules are necessary to treat the number and selection of examining entities, service regions, conflict of interests, FCC procedures, permissible fees and allowable expenses.

Conclusion

The substantial parallels outlined above between the Amateur operator's license and the commercial operator's license are a compelling argument for modeling the new Commercial Radio Operator's Examination System on the performance-tested Amateur Radio Operator's Volunteer

Examination System. The Amateur system took five years to mature into the smoothly-functioning system that exists today. Rather than starting fresh to arrive, ultimately, at the same point, the Commission should take advantage of one of its greatest successes and build on it.